

(2) On Tuesday, September 26, 2000, claimant was in such pain that he was unable to go to work. After calling and informing Mr. Stubler, claimant went to the hospital emergency room for treatment. X-rays were taken and pain medication was prescribed. The hospital's records suggest that claimant injured his back playing softball. Claimant denies this, but admits to playing on a coed softball team one or two Sundays in September before quitting due to his back symptoms.

(3) Thereafter, claimant continued to work. On October 5, 2000, claimant sought treatment with Dr. Mary Ricky, a chiropractor. Her records indicate claimant attributed his back and left leg problems to work with an onset approximately six weeks before.

(4) Claimant returned to the Research Belton Hospital emergency room on October 8, 2000 and later that same day to the St. Joseph Health Center emergency room, where he was admitted to the hospital. On October 13, 2000 claimant underwent back surgery by Dr. David J. Clymer for a herniated disc.

(5) Dr. Clymer's October 13, 2000 operative report states that claimant's condition is work related.

Although there was no major fall or injury at work, it sounds as though his symptoms have clearly progressed during his vigorous activities at work. There have been no other accidents or injuries outside of the work place. Consequently, to a reasonable medical certainty, I suspect that this disk lumbar disk problem is the result of his work activities and at least to a substantial degree his bending and lifting at work have caused or accelerated this degenerative disk process resulting in his current disk herniation. I also noted that he has, on MRI scan, some bulging and degenerative change of the disk at the L4-5 level. This is not so severe, however, does not appear to result in significant nerve root impingement.

(6) The Board finds that claimant's present need for medical treatment is directly related to his work with respondent.

Conclusions of Law

(1) An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.¹ The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.²

¹ Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

² Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

(2) After observing claimant testify, Judge Sample found his testimony credible and found that his work activities, at the very least, aggravated his back condition. Considering both claimant's testimony and the medical records in evidence, the Board agrees. Therefore, the Board affirms the finding that claimant sustained personal injury by accident arising out of and in the course of his employment with respondent.

(3) As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Board affirms the Order Granting Temporary Total Disability Compensation and Medical Treatment dated December 11, 2000, entered by Administrative Law Judge Julie A. N. Sample.

IT IS SO ORDERED.

Dated this ____ day of April 2001.

BOARD MEMBER

c: Kathleen A. McNamara, Kansas City, MO
Gary R. Terrill, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 44-534a(a)(2).